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**IN THE
COURT OF APPEALS OF INDIANA**

LORI RETZ,

Appellant-Respondent,

VS.

INDIANA DEPARTMENT OF CHILD
SERVICES,

Appellee-Petitioner.

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No. 18A04-0603-JV-172

APPEAL FROM THE DELAWARE CIRCUIT COURT
The Honorable Richard A. Dailey, Judge
Cause No. 18C02-0503-JT-13 and 18C02-0503-JT-14

December 11, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Lori Retz appeals the involuntary termination of her parental rights with respect to her two minor children, M.W. and K.W. She presents the following restated issues for review:

1. Was the evidence sufficient to prove that the conditions resulting in the children's removal and placement outside of Retz's home will not be remedied?
2. Was the evidence sufficient to prove a continuation of the parent-child relationship between Retz and her children poses a danger to the children?
3. Was the evidence sufficient to prove termination of the parent-child relationship was in the children's best interests?

We affirm.

The facts favorable to the judgment are that on June 26, 2003, Retz's daughters, K.W., born April 17, 1999, and M.W., born April 1, 2000, were adjudicated CHINS and placed in foster care. On March 23, 2005, the Delaware County Office of Family and Children Services (the DCOFC) filed petitions seeking the involuntary termination of the parent-child relationship between Retz and K.W. and M.W. Hearings on the petitions were held on December 5, 2005. On March 14, 2006, the court entered findings of fact, conclusion of law, and an order terminating Retz's parental rights.¹ Further facts will be provided in the discussion of the issues presented by Retz.

We will not set aside a trial court's order to terminate parental rights unless it is clearly erroneous. *In re Involuntary Termination of Parent Child Relationship of A.H.*,

¹ The parental rights of K.W.'s and M.W.'s father had already been terminated by that time.

832 N.E.2d 563 (Ind. Ct. App. 2005). All three issues presented by Retz challenge the sufficiency of the evidence supporting the termination of her parental rights with respect to three elements the DCOFC must prove in order to justify termination. As with other sufficiency challenges, in determining whether sufficient evidence supports the termination of parental rights, we neither reweigh the evidence nor judge the credibility of witnesses. *Id.* We consider only the evidence that supports the judgment and the reasonable inferences to be drawn therefrom. *Id.*

1.

Retz contends the evidence was not sufficient to prove that the conditions resulting in the children's removal and placement outside of Retz's home will not be remedied.

To determine whether the conditions that resulted in M.W.'s and K.W.'s removal will be remedied, the trial court must look to Retz's fitness at the time of the termination proceeding. *In re D.L.*, 814 N.E.2d 1022 (Ind. Ct. App. 2004), *trans. denied*. The court must also examine the patterns of conduct in which the parent historically has engaged in order to determine if future changes are likely to occur. *Id.* When making this determination, the trial court may reasonably consider the services offered to the parent and the parent's response to those services. *Id.*

On May 19, 2003, the DCOFC filed a CHINS petition – the second such proceeding focusing on Retz – in response to a police investigation of an incident involving Retz and her daughters. An investigation revealed that Retz had become angry and whipped K.W. excessively, thrown both children across the room several times, and

verbally threatened to kill them. She received a battery conviction as a result of the incident.

Amber Snider became involved with Retz and her children in July 2001 during the first CHINS proceedings involving Retz's family. That action was dropped after approximately one year, but she later became case manager of the second CHINS action involving Retz. That one commenced in May 2003 and was ongoing when Snider's involvement ended in March 2005. Snider described Retz's behavior during that time as follows:

[T]here's been a pattern of we start to increase visits so that she can have her children reunified with her and uh, once we get to the point where uh, we're looking at starting over and it's during the week and on the weekends that hopefully within a month the girls will be back in her home, she stops going to therapy appointments or doesn't do as well. She sometimes goes off her medication. She misses appointments. She was missing appointments ... the case manager coming to her home for scheduled appointments, she wouldn't be there for those things and so we'd have to pull them back and to be supervised. She would get into arguments with people such as her mom and things like that.

Transcript at 199. Snider told Retz as late as 2004 that if she wanted to be reunited with her daughters, she would have to participate in services, attend therapy sessions, take her medication, and find a place of her own to live. According to Snider's testimony, from June 4, 2003, when Retz was evicted from the apartment in which she lived, until February 2005, she changed residences at least nine times, once living in a truck, and always moving in with a friend or acquaintance. Snider also testified that Retz's employment history had "not been stable". *Id.* at 203. Retz started working for

Magnatech and was fired on September 15, 2003. She started at Spartech Plastics on September 22, 2003 and quit less than one week later, on September 28. On October 1, 2003, she started a job at Ball State, but no longer worked there as of November 24, 2003. She started working at a Family Dollar store on January 24, 2004, and no longer worked there as of October 27, 2004, when she began working at a McDonald's Restaurant. Snider did not know whether Retz was working at the time of the termination hearing, but it appears she was not.

Diagnostic and evaluative tests revealed that Retz suffers from bipolar disorder and anxiety disorder. Dr. Paul Spengler explained what the testing revealed about Retz's personality. He described Retz as having a paranoid thought process, exhibiting antisocial characteristics, having clear authority problems, and likely to break the law. He testified about her profile on another diagnostic test, the Milan Clinical Mutiaxial Inventory:

Basically she again reported extremely high levels of distress. She probably is very overwhelmed her [sic] role as a parent. It was a profile that's commonly associated with neglect and abuse types of behaviors by parents. Uh, there was diffuse elevation across all scales and the interpretation suggests that this individual probably has a poor attachment with the children and doesn't understand parenting appropriately in terms of being child focused and understanding discipline appropriately and how to use parenting techniques appropriately.

Id. at 33. Dr. Spengler also testified that Retz's psychological profile indicated she had "distinct problems with impulse control," *id.* at 28, and would "aggressively act out under stress[.]" *Id.*

A review of the record, including the information set out above, reveals that Retz has a lengthy history of significant mental illness, and to the extent it is controllable by medication, Retz does not consistently take her medication. She also has established a troubling history of not maintaining adequate employment to support herself and her children, and of failing to secure and maintain suitable housing. Moreover, she has either not fully availed herself of the services available to address her significant deficiencies in parenting skills, or has failed to improve to any appreciable degree in that regard despite having participated in some services. There is sufficient evidence to support the finding that the conditions that led to the children's removal from the home will not be remedied.

2.

Retz contends the evidence was not sufficient to prove a continuation of the parent-child relationship between Retz and her children poses a danger to the children.

Much of the evidence supporting this finding is set out above in our resolution of Issue 1. To review, Retz suffers from bipolar disorder and anxiety disorder and has not responded favorably to treatment and medication for those conditions. Dr. Spengler testified that Retz has a paranoid thought process, exhibits antisocial characteristics, has clear authority problems, and is likely to break the law. He testified that her psychological profile identifies her as prone to engage in neglectful and abusive behaviors toward the children. She was, in fact, convicted of abusing the children. Dr. Spengler testified Retz does not understand how to parent and discipline appropriately.

Dr. Spengler also testified that Retz's psychological profile indicates she has difficulty controlling her impulses and acts out aggressively when stressed.

At the time of the final hearing, Jim and Lisa Keener had been K.W.'s and M.W.'s foster parents for approximately two-and-one-half years. They testified that the girls were more aggressive and tended to act out more in the Keeners' household immediately before and after they visited with Retz. Lisa recounted a time when the girls reported talking with their father by telephone during visitation with Retz, at a time after the father's parental rights had been terminated. Lisa testified that K.W. in particular was thereafter very agitated. K.W. became "very, very upset" with M.W., hitting, pinching, and scratching M.W.'s face. *Transcript* at 174. Lisa testified that she had several conversations with Retz in which Retz asked the Keeners to adopt the girls because "even if she got her children back she wasn't sure if she could manage." *Id.* at 170.

"The purpose of terminating parental rights is not to punish parents but to protect children." *In re A.I.*, 825 N.E.2d 798, 805 (Ind. Ct. App. 2005), *trans. denied*. There was ample evidence presented to establish that Retz engaged in destructive and dangerous behavior, that the behavior was ongoing without any serious sign of improvement, and that the behavior posed a threat to K.W. and M.W. Accordingly, there was sufficient evidence to support the finding a continuation of the parent-child relationship between Retz and her children poses a danger to the children.

Retz contends the evidence was insufficient to prove termination of the parent-child relationship was in the children's best interests.

In determining what is in a child's best interests, the trial court must consider the totality of the evidence. *In re D.L.*, 814 N.E.2d 1022. In doing this, the trial court must subordinate the parent's interests to those of the child or children involved. A child's need for permanency is an important consideration in determining the child's best interests. *Id.* Susan Ream, the children's therapist, testified about the importance of consistency and permanency in the girls' lives:

I cannot stress enough that the girls need some kind of permanency in their life [sic]. They have not, they've had two and a half years of chaos of not knowing how long we're going to stay here? Where are we gonna be? Where are we gonna go? ... What I do recommend is whatever permanent plan is put into place to offer structure, it offers stability, it offers consistency. Uh, consistent parenting and the girls have a clear understanding that this is their forever home.

Transcript at 140-41. Ream's recommendations must be considered in light of Dr. Spengler's diagnosis that Retz exhibited "chronic and severe psychiatric disturbance," *Id.* at 123, and that her test results were consistent with someone at risk of "significant parenting problems, including abuse and neglect." *Id.* Finally, we consider Snider's testimony revealing that Retz has been either unwilling or unable to improve in critical parenting areas despite remedial intervention and services offered to address her personal difficulties and parenting shortcomings. We conclude that the DCOFC presented clear

and convincing evidence that termination of Retz's parental rights is in the best interests of M.W. and K.W.

Judgment affirmed.

KIRSCH, C.J., and RILEY, J., concur.